1947

File No. O. Divorce /47

Legal DEPARTMENT

A BRANCH

Subject:— Opinions under the Bombay Hindu Divorce Act 1947

P3E

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Office of the R.L.A.

The question raised for the consideration of the R.L.A. is whether the Bombay Hindu Divorce Act, 1947 , would be appligable to a bonafide Hindu married couple of Assam.

According to international law, the domicile for the time being of the married pair affords the only true test of jurisdiction to dissolve their marriage (per Lord Watson in Le Mesurier v. Le Mesurier 1895 A.C. 517 P.C.).

"It seems " says Lord Justice Brett "that the only Court which, on principle, ought to entertain the question of altering the relation in any respect between parties admitted to be married or the status of either of such parties arising from thier being married, on account of some act which by law is treated as a matrimonial offence is a court of the country in which they are domiciled at the time of the institution of the suit. If this be a correct proposition , it follows that the court must be the court of the country in which the husband is at the time domiciled, because it is incontestable that the domicil which her husband selects for himself, and at the commencement of the suit she is exhypothesi- still a wife" (Niboyet v. Niboyet 1878, 4 P.D. 1, 13,14, Dicey's Conflict of Laws p.273). Residence as contrasted with domicil is certainly unimportant. H. & W. are domiciled in Engeland , but reside in France W commits adultery in Paris. H though residing abroad can obtain a divorce from the court (Ibid p. 279). Consequently what is essential for the purposes of jurisdiction of the courts in this Province to entertain divorce suits under the Bombay Hindu Divorce Act, 1947 is the domicil of the husband; and if he has such domicil in this Province , a suit for divorce can be entertained in this Province; and

for purposes of determining the forum in this province the question of residence under section 5 would be material. The view takin by H.D. in its office note at p. 3 ante is correct.

Sd/-P.M.Lad
Sd/-16/6/47/

Remembrancer of Legal Affairs.

U.R. to H.D. No. 6297 , dated the 18th June 1947.

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